

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HOMER LEE RICHARDSON,	:	
	:	NO. 1:05-CV-00667
Plaintiff,	:	
	:	
v.	:	
	:	OPINION AND ORDER
UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation (doc. 9), to which there were no objections. For the reasons indicated herein, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation.

Plaintiff filed his Complaint on October 13, 2005, seeking injunctive relief related to the collection of his unpaid tax liability for the year 1997 (doc. 1). Plaintiff specifically sought release of a federal tax lien against him, and damages in the amount of \$10,000.00 (Id.). Defendant filed its Motion to Dismiss on December 19, 2005 (doc. 5).

In his July 13, 2006 Report and Recommendation concerning Defendant's Motion to Dismiss, the Magistrate Judge found that the Court lacks jurisdiction over Plaintiff's claims for Injunctive Relief (doc. 9). The Magistrate Judge specifically noted that because the tax lien against Plaintiff was released on October 24, 2005, and a decision was issued by the United States Tax Court on April 11, 2006 concerning Plaintiff's dispute, the question of

injunctive relief is rendered moot (Id.). The Magistrate Judge further found that to the extent Plaintiff requested prospective injunctive relief, such relief is barred by the Anti-Injunction Act, 26 U.S.C. § 7421(a), which expressly prohibits a taxpayer from bringing suit in order to restrain the assessment or collection of a tax (Id.). Plaintiff failed to show that he would face the threat of irreparable harm or that he was facing a meritless tax claim, two exceptions to the general rule of the Anti-Injunction Act (Id. citing Enochs v. Williams Packaging & Navigating, Co., Inc., 370 U.S. 1,7 (1962)). Moreover, the Tax Court found him liable for the assessed taxes, and he has a legal remedy available through a claim for refund after the collection of the taxes (Id.).

The Magistrate Judge further found that Plaintiff fails to state a claim for legal relief pursuant to 26 U.S.C. § 6325 or 7432, because Plaintiff has failed to establish that Defendant failed to release the lien pursuant to the statutory criteria (Id.). Because both parties submitted evidence in support of their respective positions, the Magistrate Judge found no prejudice in treating Defendant's motion as one for summary judgment (Id.). Plaintiff proffered no evidence that Defendants knowingly or negligently failed to release the lien (Id.). Accordingly, the Magistrate Judge found well-taken Defendant's dispositive motion as to Plaintiff's claims for money damages (Id.).

Having reviewed this matter, the Court finds the

Magistrate Judge's Report and Recommendation thorough and well-reasoned. For the reasons stated above, the Court lacks jurisdiction over Plaintiff's requests for injunctive relief, and Plaintiff's claim for money damages fails as a matter of law. Plaintiff did not object to the Magistrate Judge's opinion, and the Court finds warranted a judgment for Defendant.

Proper notice was provided to the Parties under Title 28 U.S.C. § 636(b)(1)(C), including the notice that they would waive further appeal if they failed to file an objection to the Magistrate Judge's Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). No objections were filed.

Having reviewed this matter de novo, pursuant to Title 28 U.S.C. § 636, the Court finds correct the Magistrate Judge's Report and Recommendation (doc. 9). Accordingly, the Court hereby ADOPTS the Magistrate Judge's Report and Recommendation (doc. 9), AFFIRMS the Magistrate Judge's recommended decision (Id.), and GRANTS Defendant's Motion to Dismiss (doc. 5). The Court further TERMINATES this case from the Court's docket.

SO ORDERED.

Date: August 16, 2006

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge